

Exhibit 347

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR
LEON COUNTY, FLORIDA

THE STATE OF FLORIDA)

ex rel.)

VEN-A-CARE OF THE)
FLORIDA KEYS, INC.,)
a Florida Corporation, by)
and through its principal)
officers and directors,)
ZACHARY T. BENTLY and)
T. MARK JONES,)

Plaintiffs,)

VS.)

CIVIL ACTION NO.
98-3032A

BOEHRINGER INGELHEIM)
CORPORATION; DEY, INC.; DEY,)
L.P.; EMD PHARMACEUTICALS,)
INC.; LIPHA, S.A.; MERCK,)
KgaA; MERCK-LIPHA, S.A.;)
SCHERING CORPORATION;)
SCHERING-PLOUGH CORPORATION;)
ROXANE LABORATORIES, INC.;)
and WARRICK PHARMACEUTICALS)
CORPORATION,)
Defendants.)

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VIDEOTAPED DEPOSITION OF

TODD CHRISTOPHER GALLES

VOLUME 1

February 28, 2006

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1 A. As a product director I led the promotional
2 development of materials for specific product and
3 disease segment for allergy.

4 Q. And where were you employed prior to your
5 employment at Santen?

09:08

6 A. Dey Laboratories.

7 Q. How long were you at Dey Laboratories?

8 A. About seven years.

9 Q. And what jobs did you hold during those seven
10 years at Dey Laboratories?

09:09

11 A. Product manager, senior product manager and
12 group product manager.

13 Q. You said product manager, senior product
14 manager and group manager?

15 A. Yes.

09:09

16 Q. Okay. Let's go in reverse chronological
17 order. What did you do as a product manager at Dey
18 Laboratories?

19 A. Initially I was brought in to help them with
20 new products, but then when they really saw my
21 background, they put me in immediately to start
22 working on generic product launches. And so I
23 immediately started working on cromolyn sodium and
24 that was -- they were getting ready to gear up for
25 launch, so initially that was my full responsibility.

09:09

09:09

1 And the idea was to brand a generic and so they wanted
2 me to bring the branded experience, sample programs,
3 things like that, to the generic side.

4 Q. When was cromolyn sodium launched,
5 approximately?

09:10

6 A. Well, right when I started, so '94. Probably
7 the spring of '94.

8 Q. So you started at Dey as a product manager in
9 the spring of '94?

10 A. Yes.

09:10

11 Q. What other generic products did you launch as
12 product manager?

13 A. Well, quite a few. Cromolyn, Ipratropium,
14 Albuterol solution, the multi-dose. I guess two
15 versions of that, one from Glaxo and then later one
16 from Bausch & Lomb. A metered-dose inhaler, Albuterol
17 product. That was also from Glaxo.

09:10

18 Q. And explain for me why it is that a Glaxo
19 product would be involved with Dey Laboratories.

20 A. It was going off patent and generic
21 competition was imminent, so rather than fighting the
22 flow, they went with it and decided to partner with
23 someone. We convinced them that if they'd work with
24 us we could help them save units. And if they could
25 save units in production, that meant they could keep

09:11

09:11

1 cost of goods down for both their brand and the
2 generic.

3 Q. And when did you stop being a product manager
4 and become a senior product manager at Dey
5 Laboratories?

09:11

6 A. It was pretty quick. I think it was about a
7 year or something.

8 Q. So maybe spring of '95?

9 A. Somewhere -- spring, summer, fall, somewhere
10 in there, but it was pretty quick.

09:12

11 Q. And what did you do as a senior product
12 manager --

13 A. Same thing.

14 Q. -- at Dey Laboratories?

15 And at what point did you stop being a
16 senior product manager at Dey Laboratories and become
17 a group manager, approximately?

09:12

18 A. You know, I'm -- I'm not sure. I think I was
19 group manager for at least two or three years and I
20 left in 2001, so 2000 -- I mean, 1998, maybe, or --
21 but that's -- I mean, my resume should be here
22 somewhere.

09:12

23 Q. And what did you do as a group manager that
24 you didn't do as either a product manager or a senior
25 product manager at Dey Laboratories?

09:13

1 competitors either didn't try to do that or couldn't
2 do that. And so that was a huge advantage for us in
3 the hospital.

4 Q. (BY MR. THOMAS) What other strategies --

5 MR. McDONALD: Excuse me. Objection,
6 nonresponsive. 10:06

7 Q. (BY MR. THOMAS) What other strategies did
8 you employ while you were at Dey Laboratories to grow
9 share with generics?

10 MS. GIULIANA: Object to the form of the 10:06
11 question. And at this point, Mark, I think your
12 questions are too broad. I think that -- you know,
13 and Mr. Galles' answers I think are evidence that your
14 questions are too broad. I think if you want to ask
15 about specific generics for which Mr. Galles was 10:06
16 involved in launching or preparing strategies for,
17 that may be a better way to go about your questions
18 because as it is, I just think that they're very vague
19 right now.

20 MR. ANDERSON: I object to the sidebar 10:06
21 comment and move to strike it.

22 MR. THOMAS: I second the motion to
23 strike.

24 May I hear the last question I asked
25 again, please? 10:06

1 (Requested portion was read)

2 Q. (BY MR. THOMAS) There is an objection on the
3 table by your counsel, but if you can answer the
4 question, I would ask you to, Mr. Galles.

5 A. Well, give at least a partial answer because 10:07
6 there were -- I mean, there were many strategies. I
7 don't want to think that I'm going to be totally
8 comprehensive here, but the first one that popped to
9 mind was a sample program. I think it's rare on the
10 generic side to offer samples to physicians and we 10:07
11 offered samples. I did a large -- well, in my opinion
12 it was a large sample program for cromolyn that we
13 mailed directly to pediatricians and -- and we got
14 comments back from doctors, "What do you mean you're a
15 generic? How can you offer samples?" And -- but we 10:08
16 could.

17 We -- we ran an efficient business so
18 that we could still do it because we wanted them to
19 try our product. We wanted patients to try it. And I
20 knew from working on the branded side the way to do 10:08
21 that is get the product sample on the doctor's shelf.
22 So we actually as a generic had doctors writing Dey
23 cromolyn sodium and they checked the box in the
24 prescription "Do not substitute." So that was -- that
25 was a really cool thing to happen on a generic side 10:08

1 because that meant the pharmacist had to dispense that
2 product.

3 Q. What other strategies did you employ while
4 you were at Dey Laboratories to maximize the exposure
5 of the generics that you were responsible for in the
6 market? 10:08

7 MS. GIULIANA: Object to the form.

8 Q. (BY MR. THOMAS) You can answer.

9 A. Well, one additional strategy was to attend
10 trade shows. 10:09

11 Q. You had mentioned in response to a question I
12 had asked you didn't just market on price while you
13 were employed with Dey Laboratories. Is price an
14 important part of marketing in the generic
15 marketplace? 10:09

16 MR. McDONALD: Object to the form.

17 MS. GIULIANA: Object to the form.

18 A. Price certainly can be and it -- I think as
19 long as it's a level playing field, which was always
20 my goal, it -- it shouldn't be. I mean, first of all, 10:09
21 generics are all offering a discount off of brand, so
22 with regard of having a lower price than the brand,
23 it's critical. But having the same price parity to
24 other generics, then it was fine. Then you could talk
25 about packaging. You could say for Ipratropium you 10:10

1 are using, whatever, 25 percent of the same -- of the
2 shelf space that their package would offer and you
3 could say, okay, what is that worth to you on your --
4 your shelf. You could talk about maybe wastage due to
5 packaging. Different things like that.

10:10

6 But if -- if your price wasn't in line,
7 then it probably would become an issue for sales. So
8 I tried to -- I focused on showing the benefits of the
9 product. And for the most part generics should all be
10 in the same range. Once a product is launched, the
11 pricing erodes down over time, but it generally erodes
12 down in combination with all the other products in
13 that segment.

10:10

14 Q. When you say that there need be price parity
15 with other generics in order to be able to address
16 other marketing issues, how -- how is price parity
17 achieved?

10:11

18 MS. GIULIANA: Object to the form.

19 A. Well, initially I would analyze the market
20 and if there were generics in the market I would
21 recommend a price within a tight range to the generics
22 that were there because that's the price the market
23 would bear. If -- I think there was always a generic
24 there. I guess for cromolyn, I don't think I probably
25 set the price for cromolyn because I think I came in

10:11

10:12